

### **Note from the President of the of the Board**

Decorum of a meeting is the proper or right conduct and etiquette expected during board meetings.

It includes for all attendees (Board & Public):

ARRIVE PREPARED

RESPECT TIME

PUBLIC COMMENTS ARE 3 MINUTES

FOLLOW THE AGENDA

ACTIVELY LISTEN

MAINTAIN RESPECTFUL COMMUNICATION

BE PUNCTUAL

AVOID INTERRUPTIONS OR SIDE CONVERSATIONS

ADHERE TO THE RULES

TURN PHONE TO SILENT

**SPECIAL CALLED BOARD MEETING  
GONZALES COUNTY UNDERGROUND WATER CONSERVATION DISTRICT  
MEETING OF THE BOARD OF DIRECTORS**

The Directors of the Gonzales County Underground Water Conservation District will meet in a public session on July 16, 2025, scheduled at 5:30 p.m. at the Gonzales County Court House, District Courtroom located at 414 Saint Joseph Street, Gonzales, Texas.

**Note:** Members of the public wishing to comment must attend the meeting in-person. However, any person may view or listen to the meeting via audio and video conference call. No participation or public comments will be allowed via video or conference call. The Audio and Video Conference Opens 5 minutes before 5:30 p.m. at the beginning of the meeting.

**GCUWCD Special Called Meeting**

**Jul 16, 2025, 5:30 – 6:30 PM (America/Chicago)**

**Please join my meeting from your computer, tablet or smartphone.**

<https://meet.goto.com/137123493>

**You can also dial in using your phone.**

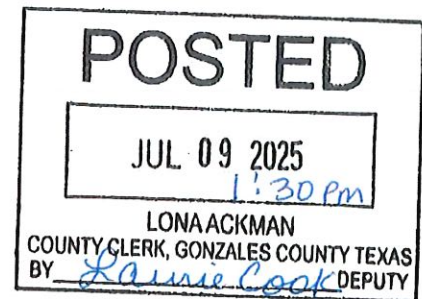
**Access Code: 137-123-493**

**United States (Toll Free): 1 877 305 2073**

**United States: +1 (646) 749-3129**

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1. Call to Order.
2. Public Comments. Limited to 3 minutes per person.
3. Discuss and possibly act on the continuation of the final hearing on the Guadalupe-Blanco River Authority permit amendment application to approve the findings of fact and conclusions of law.
4. Discussion of other items of interest by the Board and direction to management based on the items set forth above.
5. Adjourn.

The above agenda schedule represents an estimate of the order for the indicated items and is subject to change at any time. These public meetings are available to all people regardless of disability. If you require special assistance to attend the meeting, please call 830.672.1047 at least 24 hours in advance of the meeting to coordinate any special physical access arrangements.

At any time during the meeting and in compliance with the Texas Open Meetings Act, Chapter 551, Government Code, Vernon's Texas Codes, Annotated, the Gonzales County Underground Water Conservation District Board may meet in executive session on any of the above agenda items or other lawful items for consultation concerning attorney-client matters (§ 551.071); deliberation regarding real property (§ 551.072); deliberation regarding prospective gift (§ 551.073); personnel matters (§ 551.074); and deliberation regarding security devices (§ 551.076). Any subject discussed in the executive session may be subject to action during an open meeting.

**POSTED THIS THE 09<sup>th</sup> DAY OF JULY 2025 AT \_\_\_\_\_ O'CLOCK by \_\_\_\_\_.**

**SPECIAL CALLED BOARD MEETING  
GONZALES COUNTY UNDERGROUND WATER CONSERVATION DISTRICT  
MEETING OF THE BOARD OF DIRECTORS**

The Directors of the Gonzales County Underground Water Conservation District will meet in a public session on July 30, 2025, scheduled at 5:30 p.m. at the Gonzales County Court House, District Courtroom located at 414 Saint Joseph Street, Gonzales, Texas.

**Note:** Members of the public wishing to comment must attend the meeting in-person. However, any person may view or listen to the meeting via audio and video conference call. No participation or public comments will be allowed via video or conference call. The Audio and Video Conference Opens 5 minutes before 5:30 p.m. at the beginning of the meeting.

**GCUWCD Special Called Meeting**

**Jul 30, 2025, 5:30 – 6:30 PM (America/Chicago)**

**Please join my meeting from your computer, tablet or smartphone.**

<https://meet.goto.com/137123493>

**You can also dial in using your phone.**

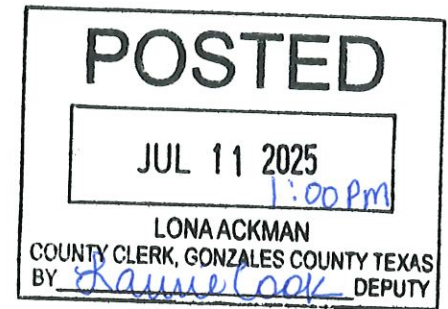
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**POSTED THIS THE 11<sup>th</sup> DAY OF JULY 2025 AT \_\_\_\_\_ O'CLOCK by \_\_\_\_\_.**



APPLICATION OF	§	BEFORE THE
GUADALUPE-BLANCO RIVER	§	GONZALES COUNTY
AUTHORITY FOR AMENDMENT TO	§	UNDERGROUND
PRODUCTION PERMIT NO. 11-16-17	§	WATER CONSERVATION DISTRICT
AND EXPORT PERMIT NO. 01-13-01	§	

**Explanation of the Board of Directors' Decision and Differences with the  
State Office of Administrative Hearings' Proposal for Decision**

UNIVERSAL: Many of the edits were necessary to change the document from a proposed decision to a final decision. References to decisions by the Administrative Law Judge were identified as such and in the proper tense. The grammar was corrected throughout the document as well. Specific edits made by the Board of Directors are listed below. In addition, references to the “proposed use of water”<sup>1</sup> are replaced with “proposed groundwater production” where appropriate to reference groundwater demand instead of beneficial use. As a technical correction, every reference to an average drawdown of 48 feet is changed to an average drawdown of 49 feet.

Introductory Paragraphs

New paragraphs inserted summarizing permit amendments reviewed by the Board and itemizing changes made to certain findings of fact and conclusion of law recommended by the ALJ.

SECTION IV. Discussion

**E. Effect of the Proposed Use of Water on Groundwater and Surface Water Resources and Existing Permit Holders (Rule 11.A.4; Tex. Water Code § 36.113(D)(2))**

Removed the sentence “The greater weight of the evidence shows that the proposed additional 9,000 AFY of pumping will not unreasonably affect existing groundwater, surface water resources, or existing permit holders.” The sentence was removed because it conflates factual findings and conclusions of law. The facts state the expected drawdown caused by the proposed groundwater withdrawals. The reasonableness of those drawdowns is a legal conclusion.

**K. Water Permitted, Water Produced, and Aquifer Condition to Achieve the DFC (Rule 11.A.10)**

**2. Drawdown**

Technical correction from “northern” to “eastern” to match transcript testimony.

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<sup>1</sup> Tex. Water Code § 36.113 contains several references to the “proposed use of water” and does not differentiate between the use of the water and the amount of production. The Final Order uses “proposed groundwater production” where the context requires considering the amount of groundwater produced, not its use.

**L. Availability of Water (Rule 15.D.1; Tex. Water Code § 36.122(F)(1))**

**1. Applicable MAGs**

Added a reference to the 8<sup>th</sup> Court of Appeals case that discussed the interplay between Chapter 36, Tex. Water Code, and Chapter 245, Tex. Local Gov't. Code, and an explanation that the District's goal is to achieve the current Desired Future Condition, which requires consideration of the current MAG.

**SECTION VII. Findings of Fact**

Groundwater and Surface Water Resources and Existing Permit Holders

FOF # 39 makes a technical correction from "15 to 20 percent" to "25 to 30 percent" ( $121/400 = 0.3$  or 30% and  $121/300 = 0.4$  or 40%).

Groundwater and Surface Water Resources and Existing Permit Holders

FOF #44, #45, and #49 deleted. These are not factual statements because they require a value judgment.

District Management Plan

FOF #61 deleted. This is not a factual statement because it requires a value judgment.

Subsidence

FOF #71 deleted. This is not a factual statement because it requires a value judgment.

Effects of Transfer on Aquifer Conditions, Depletion, Existing Permit Holders, or Other Groundwater Users in the District

FOF #88 deleted. This is not a factual statement because it requires a value judgment.

FOF #90 modified. Changed to match other findings.

FOF #94 deleted. This is not a factual statement because it requires a value judgment.

<p><b>APPLICATION OF GUADALUPE-BLANCO RIVER AUTHORITY FOR AMENDMENT TO PRODUCTION PERMIT NO. 11-16-17 AND EXPORT PERMIT NO. 01-13-01</b></p>	<p>§ § § § §</p>	<p><b>BEFORE THE GONZALES COUNTY UNDERGROUND WATER CONSERVATION DISTRICT</b></p>
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**FINAL DECISION**

The Guadalupe-Blanco River Authority (GBRA) filed applications to amend Production Permit No. 11-16-17 (Operating Permit) and Export Permit No. 01-13-01 (Export Permit) (collectively, Applications) with Gonzales County Underground Water Conservation District (the District). The Administrative Law Judge (ALJ) recommended granting the application to amend the Operating Permit and denying the application to amend the Export Permit.

The Board of Directors considered GBRA's Applications to Amend Operating Permit No. 11-16-17 and Export Permit No. 01-13-01 to increase the production and export authorized under those permits by 9,000 acre-feet of groundwater per year, add three wells, and revise the maximum pumping capacities of GBRA's existing wells, along with the ALJ's recommendations and voted to deny the applications as requested by GBRA. For the following reasons, and consistent with Tex. Water Code §36.4165(b), the Board of Directors changed certain findings of fact and conclusions of law recommended by the ALJ:

1. As per the District's Rules, the 2018 Management Plan is applicable to GBRA's applications, as it was the plan in effect when GBRA filed its applications.
2. The production of 9,000 AFY of water has an unreasonable effect on aquifer conditions to the extent it is predicted to contribute to any failure to achieve the Desired Future Conditions (DFCs). By definition, the additional production would cause unreasonable impacts to existing groundwater resources and existing permit holders.
3. Demonstrating that the Modeled Available Groundwater (MAG) will not be exceeded is not a precondition for permit issuance. Although the MAG is not a cap on permitting Tex.

Water Code § 36.1132(b)(1) requires the Board to consider the MAG when evaluating permit amendment applications.

4. Expansion of GBRA's Mid-Basin Project to include the production of an additional 9,000 acre-feet of groundwater is inconsistent with the state and regional water plans.

## **I. Background**

GBRA conducted a study to evaluate sources of water supply to meet growing demands. The consulting engineers who performed the study determined that production of groundwater supplies from the Carrizo Aquifer from a wellfield with leases owned by Texas Water Alliance (TWA) would be a cost-effective and technically feasible solution to meet demands in GBRA's statutory district.<sup>1</sup> GBRA purchased from TWA 165 groundwater leases with landowners in Gonzales and Caldwell counties. Under these leases, GBRA makes annual payments to the landowners in exchange for the right to produce groundwater from the Carrizo Aquifer beneath the leased properties.<sup>2</sup>

GBRA has existing groundwater production and export permits with the District that authorize GBRA to pump a maximum of 15,000 acre-feet per year (AFY) from the Carrizo Aquifer from seven groundwater wells and to export the produced water outside of the District's boundaries.<sup>3</sup> GBRA has fully allocated the 15,000 AFY of currently permitted groundwater. GBRA now seeks to develop additional groundwater supply to serve growth within the region.<sup>4</sup>

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<sup>1</sup> GBRA Ex. 1 at 7-9.

<sup>2</sup> GBRA Ex. 1 at 9; *see* GBRA Exs. 3, 4.

<sup>3</sup> GBRA Ex. 1 at 9; *see* GBRA Exs. 5, 5a. GBRA's existing permits are under a "stair-step program" in which GBRA may produce 5,000 AFY in 2018 to 2022; 10,000 AFY in 2023 to 2027; and the full 15,000 AFY in 2028 and beyond. Transcript of Hearing on the Merits (Tr.) Volume (Vol.) 3.

<sup>4</sup> GBRA Ex. 1 at 10, 16.

## **II. Procedural History, Notice, and Jurisdiction**

### **1. Applications**

On May 10, 2022, GBRA filed its application to amend its Operating Permit, seeking authorization to produce an additional 9,000 AFY of groundwater, to add three additional wells, and to revise the capacities of the existing seven wells.<sup>5</sup> On the same date, GBRA filed its application to amend its Export Permit to allow GBRA to export the additional 9,000 AFY of groundwater out of the District to Caldwell, Hays, and Guadalupe Counties.<sup>6</sup> After GBRA provided the District with additional information, the District declared the Applications administratively complete on August 17, 2022.<sup>7</sup>

### **2. Procedural History**

On June 5, 2023, the District referred the Applications to the State Office of Administrative Hearings (SOAH). On August 9, 2023, SOAH ALJ Linda Brite held a preliminary hearing via Zoom videoconference. At the preliminary hearing, the ALJ admitted the following as parties: GBRA; the District General Manager (GM); Gonzales County Water Supply Corporation; Mark Ploeger, Sally Ploeger, Mary Ann Menning, and Water Protection Association (aligned, and collectively WPA); Phil Breitschopf, Jason Breitschopf, and A.P. Breitschopf and Sons, Inc. (aligned, and collectively Breitschopf); and Ted Boriack. By Order No. 3 on January 3, 2024, Gonzales County Water Supply Corporation was dismissed as a party from this proceeding.

The hearing on the merits was held on June 5-7, 2024, before ALJ Brite at the Gonzales County Courthouse and the District Office, in Gonzales, Texas. GBRA appeared and was represented by attorney Emily Rogers. The GM appeared and was represented by attorney Adam

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<sup>5</sup> GBRA Ex. 1 at 12-13; GBRA Ex. 7.

<sup>6</sup> GBRA Ex. 1 at 13-14; GBRA Ex. 8.

<sup>7</sup> GBRA Ex. 1 at 16; GBRA Ex. 14; GM Ex. 100 at 7, 11.



Friedman. WPA appeared and was represented by attorney Lawrence Dunbar. Breitschopf appeared and was represented by Phil Breitschopf. Ted Boriack appeared and represented himself. The record closed on October 21, 2024, after the filing of written briefs.

All witnesses prefiled direct testimony and testified at the hearing. Applicant presented the testimony of Charles M. Hickman, P.E. and James A. Beach, P.G. The GM presented the testimony of Laura Martin-Preston and T. Neil Blandford, P.G. WPA presented the testimony of Mark Ploeger. Breitschopf presented the testimony of Phil Breitschopf. Mr. Boriack testified on his own behalf.

### **3. Notice**

Notice of the SOAH hearing was uncontested and is addressed solely in the findings of fact and conclusions of law.

Upon receipt of the Notice of Permit Application, the applicant must publish the Notice of Permit Application in the newspaper of largest circulation within Gonzales County and Caldwell County at the earliest available publication date after receipt of the Notice from the General Manager.<sup>8</sup> The applicant must mail the Notice of Permit Application to adjacent property owners (as shown on the County Tax Rolls as of the date the application is filed) and all existing and registered permitted well owners within one-half mile of the proposed water well (as shown in the records of the District)<sup>9</sup>.

Mr. Boriack posits that he did not receive notice of the Applications from GBRA, despite experiencing drawdown over his property and his participation in a contested case hearing for previous wells. Mr. Boriack contends that because the landowner list originally provided to him

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<sup>8</sup> District Rule (Rule) 24.A.

<sup>9</sup> Rules 10.D.10, .11, 24.A.

by the District does not match the list later produced in February 2024, he is not convinced that notice complied with the District rules (Rules).<sup>10</sup>

GBRA asserts that it published notice of the Applications and mailed notices to the landowners per the Rules.<sup>11</sup> The landowner list produced by GBRA included more landowners than the list provided by the District.<sup>12</sup>

GBRA produced the landowner list to which notice of the application was provided. Mr. Boriack did not show any error or noncompliance within GBRA's landowner list. The ALJ found that notice of the Applications was provided in conformance with Rules 10 and 24.A. Jurisdiction

#### **4. Jurisdiction**

Mr. Boriack challenges SOAH's jurisdiction on the basis that the applications are not administratively complete. The administrative completeness and jurisdictional arguments are addressed in section IV.A of this Final Order.

### **III. Applicable Law**

In Texas, a landowner owns the groundwater below the surface of his or her land as real property and is entitled to drill for and produce that water, subject to a groundwater conservation district's (GCD's) well spacing and production restrictions, so long as the drilling and production does not cause waste or malicious drainage of other property, or negligently cause subsidence.<sup>13</sup> GCDs shall provide for the conservation, preservation, protection, recharging, and prevention of waste of groundwater, and of groundwater reservoirs or their subdivisions, and to control subsidence caused by withdrawal of water from those groundwater reservoirs or their subdivisions,

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<sup>10</sup> See Boriack Exs. 15, 16.

<sup>11</sup> GBRA Ex. 1 at 16; GBRA Exs. 15, 16; GBRA Ex. 27 at 2-3; GBRA Ex. 28; see Rule 24.A.

<sup>12</sup> See GBRA Ex. 30.

<sup>13</sup> Tex. Water Code § 36.002(a), (b), (d).

consistent with the objectives of Texas Constitution Section 59, Article XVI.<sup>14</sup> GCDs are the state's preferred method of groundwater management in order to protect property rights, balance conservation and development of groundwater to meet the needs of this state, and use the best available science in the conservation and development of groundwater through rules developed, adopted, and promulgated by a district in accordance with the provisions of Texas Water Code Chapter 36.<sup>15</sup>

A GCD shall require a permit for the drilling, equipping, operating, or completing of wells or for substantially altering the size of wells or well pumps. A GCD may require that a change in the withdrawal or use of groundwater during the term of a permit may not be made unless the district first approves a permit amendment authorizing the change.<sup>16</sup>

As the party seeking the permit amendments, GBRA has the burden of proof by a preponderance of the evidence.<sup>17</sup>

#### **IV. Discussion**

##### **A. Requirements of Texas Water Code Chapter § 36.113(d)(1) and District Rules**

##### **1. Signed and Sworn to (Tex. Water Code § 36.113(b))**

Before granting or denying a permit amendment, the district shall consider whether the application conforms to the requirements prescribed by this chapter and is accompanied by the prescribed fees.<sup>18</sup> A district shall require that an application for permit or a permit amendment be in writing and sworn to.<sup>19</sup> Any person seeking amendment of a permit must complete, sign, and

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<sup>14</sup> Tex. Water Code § 36.0015(b).

<sup>15</sup> Tex. Water Code § 36.0015(b).

<sup>16</sup> Tex. Water Code § 36.113(a).

<sup>17</sup> 1 Tex. Admin. Code § 155.427; *Granek v. Texas St. Bd. of Med. Exam'rs*, 172 S.W.3d 761, 777 (Tex. App.—Austin 2005, no pet.).

<sup>18</sup> Tex. Water Code § 36.113(d)(1).

<sup>19</sup> Tex. Water Code § 36.113(b).

submit an application to the general manager.<sup>20</sup> An application is administratively complete if it contains the information set forth under Texas Water Code sections 36.113 and 36.1131.<sup>21</sup>

The GM asserts that her role in reviewing applications for groundwater export permits and production permits is limited to whether the applications are administratively complete. On August 17, 2022, the GM deemed the Applications administratively complete. The GM has not conducted a technical review and takes no position on whether the Applications meet technical requirements.

Neither application was initially “sworn to” when submitted in May 2022, and the application forms were not signed until they were resubmitted in February 2024.<sup>22</sup> The two resubmitted Applications were signed. However, the application form for the Operating Permit does not include “sworn to” language (stating the application was true and correct to the best of their knowledge), and the GM testified that she would look into amending the forms.<sup>23</sup> Protestants contend that neither application was administratively complete in May 2022, and only the Export Permit application was “sworn to” in February 2024. The Operating Permit application remains unsworn.

GBRA applied for amendments to its Operating Permit and Export Permit on the forms prescribed by the District.<sup>24</sup> The GM considered the cover letter signed by GBRA’s General Manager to be part of the application package.<sup>25</sup> The Operating Permit application was not sworn

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<sup>20</sup> Rule 10.C.

<sup>21</sup> Tex. Water Code § 36.114(h).

<sup>22</sup> GBRA Exs. 7, 8; GM Ex. 102; *see* Transcript (Tr.) Volume (Vol.) 3 at 496-99.

<sup>23</sup> Tr. Vol. 3 at 499-500; *see* GM Ex. 102.

<sup>24</sup> GBRA Exs. 7, 8.

<sup>25</sup> GBRA Exs. 7, 8; GM Ex. 102; Tr. Vol. 3 at 497-98.

before a notary, and the District did not require it.<sup>26</sup> The GM deemed the Applications administratively complete on August 17, 2022.<sup>27</sup>

The ALJ considered GBRA's signed cover letter to be sufficient to fulfill the signature requirement. The District did not require the Applications to be sworn, as provided by the Texas Water Code.<sup>28</sup> In February 2024, GBRA submitted a sworn Export Permit application. The ALJ addressed the significance of the Operating Permit application not being "sworn to."

Courts are generally "reluctant to conclude that a statutory requirement affects a court's subject-matter jurisdiction absent clear legislative intent to that effect."<sup>29</sup> "The purpose of a contested-case hearing is not to verify whether the application is administratively and technically complete, but rather to determine whether the substance of the information provided in the application can fulfill the statutory purpose."<sup>30</sup> Here, there is no indication that the sworn requirement is jurisdictional, and the requirement does not affect the substance of the information provided in the Applications. Therefore, Mr. Boriack's challenge to jurisdiction based on administrative completeness is denied.

When a statutory provision has mandatory language, but is not jurisdictional, and does not have an explicit or logically necessary consequence, the court presumes the provision was intended as a direction rather than a mandate.<sup>31</sup> Here, no consequence for a lack of sworn application is provided in the statute or rules. Therefore, the ALJ concluded that the requirement is directory rather than mandatory. As such, it is sufficient that the GM deemed the Applications administratively complete.

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<sup>26</sup> Tr. Vol. 3 at 586.

<sup>27</sup> GM Ex. 100 at 7.

<sup>28</sup> Tex. Water Code § 36.113(b); see Rule 24.C.1.

<sup>29</sup> *Matter of D.M.*, 679 S.W.3d 864, 869 (Tex. App.—Houston [1st Dist.] 2023, pet. denied).

<sup>30</sup> *Citizens Against Landfill Location v. Texas Comm'n on Env't Quality*, 169 S.W.3d 258, 272 (Tex. App. – Austin 2005, pet. denied).

<sup>31</sup> See *AC Interests, L.P. v. Texas Comm'n on Env't Quality*, 543 S.W.3d 703, 714 (Tex. 2018).

## **2. Mitigation Plan (Rule 10.E.3)**

The District shall require a mitigation plan, acceptable to the District, to be included in the application to mitigate the effects of the drawdown of artesian pressure or the level of the water table upon registered or permitted well owners potentially affected by the water well or wells.<sup>32</sup>

The plan shall include but not be limited to:

- a. The actions and procedures to be taken by the holder of the drilling and operating permit in the event that pumping causes the water level in a registered or permitted well to drop to an unacceptable level.
- b. The actions and procedures to be taken by the holder of the drilling and operating permit in the event that the pumping from the permitted well causes the water to become objectionable or renders the water unusable to a registered or permitted well owner.
- c. The actions and procedures to be taken by the holder of the drilling and operating permit in the event that pumping causes the well casing or equipment to be damaged so that the recorded quality or quantity of water cannot be produced by the registered or permitted well owner.
- d. Measures to be taken in cases where the reduction of artesian pressure causes an emergency to arise which may threaten human or animal health safety or welfare.
- e. A specifically enumerated time schedule for the execution of the mitigation plan.<sup>33</sup>

According to GBRA, the mitigation plan is addressed via the Participation Agreement in the Eastern Gonzales County Dedicated Mitigation Fund, by and between TWA (as predecessor in interest to GBRA) and the District.<sup>34</sup> The Participation Agreement states the parties' intention to contractually adopt principles contained in the District rules relating to a well owner's responsibility to mitigate adverse impacts upon other water well users.<sup>35</sup> GBRA agreed to contribute payments into the Mitigation Fund to be used by the District for the purpose of

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<sup>32</sup> Rule 10.E.3.

<sup>33</sup> Rule 10.E.3.

<sup>34</sup> GBRA Ex. 5 at PDF 4; *see* GBRA Ex. 24 at 17-18.

<sup>35</sup> GBRA Ex. 5 at Bates 727.



investigating and evaluating mitigation claims and implementing mitigation measures for qualifying wells in eastern Gonzales County.<sup>36</sup> The GM testified that the Participation Agreement meets the requirements of the District Rule pertaining to a mitigation plan.<sup>37</sup>

Protestants contend that the Applications lack mitigation plans that contain the provisions listed in the rule. The GM was unable to answer whether the District's Mitigation Fund provides the items listed in Rule 10.E.3.<sup>38</sup>

The GM credibly testified that GBRA's participation in the Mitigation Fund complies with the District rule requirement. As such, the ALJ found that GBRA provided a sufficient mitigation plan in compliance with Rule 10.E.3.

### **3. Export Permit Requirements (Rule 15.C)**

District Rule 15.C requires, *inter alia*, the following information to be provided to the GM with an application for a permit to export water: the availability of water in the District and in the proposed receiving area during the period for which the water supply is requested; and the projected effect of the proposed transfer on aquifer conditions, depletion, subsidence, or effects on existing permit holders or other groundwater users within the District.<sup>39</sup> The provided information related to these topics is substantively discussed in sections IV.L (availability), IV.M (aquifer conditions, depletion), IV. I (subsidence), and IV.E of this Final Order.

The ALJ found that GBRA provided the information required by Rule 15.C.

### **B. Required Information Under Rule 10 and Prescribed Fees (Rule 11.A.1)**

Protestants contend that the Production Permit Application does not contain all the information required under Rule 11.A.1, as described in section IV.A of this Final Order.

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<sup>36</sup> GBRA Ex. 1 at 9.

<sup>37</sup> Tr. Vol. 3 at 595-96.

<sup>38</sup> See Tr. Vol. 511-12.

<sup>39</sup> Rule 15.C.10, .11.

Mr. Boriack asserts that it was unclear whether GBRA paid the cost of the independent third-party modeling review as required in Rule 10.E. The GM testified that the third-party modeling was paid by GBRA via the application fee.<sup>40</sup>

Mr. Beach opined that the applications meet the requirements of Rule 10.<sup>41</sup> GBRA asserts that the record establishes compliance with the various requirements of Rule 10.<sup>42</sup>

The record establishes that GBRA paid the cost of the independent third-party modeling review through its application fee. The ALJ found that GBRA provided the information required under Rule 10 and prescribed fees.

**C. Conformance with Well Spacing Requirements and Production Requirements  
(Rules 11.A.2, 18.A, 18.B)**

The District's spacing requirement is based on the proposed permitted production rate of each proposed well, the target aquifer, and the minimum distance to the property line of the nearest tract of land that is not included in the applicant's property.<sup>43</sup> Mr. Beach opined that the proposed wells meet the well spacing and production requirements in Rules 11 and 18.<sup>44</sup> The existing and proposed wells are or will be offset from the property lines between 1,965 feet to 2,790 feet.<sup>45</sup>

The maximum permitted production for a tract of land may not exceed a total of one AFY of water per surface acre of land owned from the Carrizo Aquifer.<sup>46</sup> GBRA has secured groundwater leases on approximately 42,000 acres of land.<sup>47</sup> GBRA is requesting authorization

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<sup>40</sup> Tr. Vol. 3 at 503-04.

<sup>41</sup> GBRA Ex. 24 at 12 (Bates 1381), 13 (Bates 1382), 24 (Bates 1393).

<sup>42</sup> See GBRA Closing Brief at 14-15; GM Ex. 100 at 3-4.

<sup>43</sup> Rules 18.A, 11.A.2.

<sup>44</sup> GBRA Ex. 24 at 15, 18, 19, 20.

<sup>45</sup> GBRA Ex. 7, Figures 1 and 2 (Bates 779-80).

<sup>46</sup> Rule 18.B.1.

<sup>47</sup> GBRA Ex. 1 at 8-9; GBRA Exs. 3, 4.

for 9,000 AFY in addition to its existing Operating Permit authorizing the production of 15,000 AFY of water, for a total of 24,000 AFY.<sup>48</sup>

No party contested the conformance of the Applications with the well spacing requirements and production requirements under Rules 11.A.2, 18.A, and 18.B. However, Mr. Boriack contends that the spacing rules do not fairly protect landowners.

It is not the ALJ's role to determine whether a rule is effective in accomplishing any regulatory objective. Only the District Board may adopt and revise rules through the rulemaking process. The ALJ found that the Applications comply with the well spacing and production requirements of District Rules 11.A.2, 18.A, and 18.B.

#### **D. Modeling Results and Production Limits (Rule 11.A.3)**

Before granting or denying a permit, the District shall consider whether the proposed groundwater production unreasonably affects existing groundwater or surface water resources or existing permit holders.<sup>49</sup> The District uses the 2004 Southern Groundwater Availability Models for Queen City and Sparta Aquifers (Carrizo-Wilcox GAM), which is a regional groundwater model, to assess groundwater availability and future aquifer conditions.<sup>50</sup> GBRA used the Carrizo-Wilcox GAM to assess the effects of the pumping of an additional 9,000 AFY and included those results in the Applications.<sup>51</sup> The impact of the proposed additional 9,000 AFY of water is predicted to be up to 40 feet of additional drawdown occurring in and around GBRA's proposed three new wells.<sup>52</sup> GBRA asserts that the modeling results do not deviate from production limits, as required by Rule 11.A.3.<sup>53</sup>

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<sup>48</sup> GBRA Ex. 1 at 12; GBRA Ex. 5 at Bates 719-48.

<sup>49</sup> Rule 11.A.3.

<sup>50</sup> GBRA Ex. 24 at 13-14 (Bates 1382-83).

<sup>51</sup> GBRA Ex. 7, Figure 2 (Bates 780); GBRA Ex. 24 at 19 (Bates 1388).

<sup>52</sup> GM Ex. 202 at 11 (Bates 447).

<sup>53</sup> GBRA Ex. 24 at 18-20 (Bates 1387-89).

Mr. Boriack contested the modeling results in relation to the production limits under Rule 11.A.3. Mr. Boriack asserts that there have been several MODFLOW software upgrades that were not applied to the GBRA permit modeling. Mr. Boriack contends that the Daniel B. Stephens & Associates, Inc. (DBS&A) modeling (performed for the GM) was not calibrated.

According to Mr. Beach and Mr. Blandford, the MODFLOW updates would not materially affect the results.<sup>54</sup> In the modeling report, DBS&A determined that due to the relatively small number of cells where the aquifer properties were changed and because the changes were restricted to the immediate well field area, the differences in predicted water levels between the original and updated aquifer properties were small.<sup>55</sup> The record, therefore, does not contain any modeling, analyses, or other calculations utilizing the updates to MODFLOW.

The preponderant evidence establishes that the modeling results do not significantly deviate from the production limitations of Rule 18.B.

**E. Effect of the Proposed Use of Water on Groundwater and Surface Water Resources and Existing Permit Holders (Rule 11.A.4; Tex. Water Code § 36.113(D)(2))**

The District shall consider whether the proposed use of water unreasonably affects existing groundwater or surface water resources or existing permit holders.<sup>56</sup>

Protestants argue that the GBRA's proposed water use will have an adverse impact on groundwater and surface water resources and existing permit holders. Mr. Beach testified that water can move across confining layers of the Carrizo Aquifer both above and below into adjacent aquifers.<sup>57</sup> Protestants assert that this will impact existing permit holders, such as Mr. Boriack who

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<sup>54</sup> Tr. Vol. 2 at 362; GM Ex. 200 at 6-7.

<sup>55</sup> GM Ex. 202 at 2-4.

<sup>56</sup> Rule 11.A.4.

<sup>57</sup> Tr. Vol. 1 at 185.

has a well in the Queen City Aquifer. Mr. Boriack expressed concern that the drawdown effects of the whole District would be concentrated in the area of the GBRA and Alliance Regional Water Authority (ARWA) wells. Existing permit holders may not qualify to receive mitigation by the District because they are not within the Carrizo Aquifer from which GBRA would pump.<sup>58</sup>

Protestants also allege adverse impacts to the surface water resources, since the modeled drawdown due to the proposed pumping will include drawdown in the Carrizo outcrop.<sup>59</sup> Drawdown in the outcrop adversely impacts surface water resources. Mr. Beach testified that the groundwater modeling showed that with the expected production of groundwater in the District over time, there would be increase in water coming from surface water resources into the Carrizo Aquifer.<sup>60</sup> According to Mr. Beach, drawdown in the Carrizo Aquifer will also cause groundwater inflow from other counties and GCDs, including ones outside of Groundwater Management Area (GMA) 13.<sup>61</sup>

Mr. Beach opined that the pumping of an additional 9,000 AFY of water will not have unreasonable effects on groundwater and surface water resources and existing permit holders.<sup>62</sup> Water level declines are normal and expected impacts from the production of groundwater.<sup>63</sup> The Carrizo-Wilcox GAM showed that the estimated long-term effect of an additional 9,000 AFY was up to 40 feet of additional drawdown occurring in and around GBRA's proposed three new wells in the year 2072.<sup>64</sup> The maximum simulated water level decline from GBRA's proposed and existing wells (24,000 AFY) was about 121 feet in the GBRA well field. The thickness of the

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<sup>58</sup> Tr. Vol. 3 at 509-10.

<sup>59</sup> The outcrop is generally the portion of the aquifer that is exposed to the air or environment. Tr. Vol. 1 at 182.

<sup>60</sup> Tr. Vol. 2 at 313-14.

<sup>61</sup> Tr. Vol. 2 at 315-16.

<sup>62</sup> GBRA Ex. 24 at 17.

<sup>63</sup> GBRA Ex. 24 at 17.

<sup>64</sup> GBRA Exs. 7, 13; GBRA Ex. 24 at 14-15; GM Ex. 202 at 11.

Carrizo Aquifer in this location varies from 300 to 400 feet.<sup>65</sup> Mr. Blandford considered those predicted drawdowns to be relatively conservative predictions.<sup>66</sup>

Mr. Beach opined that an additional 9,000 AFY will not have an unreasonable effect on surface water resources.<sup>67</sup> Mr. Beach explained that shallow wells located in or close to the aquifer outcrop would be more likely to affect surface water resources because the water level decline from pumping of those wells has a greater impact on the water table, which may impact rivers, streams, and other surface water resources. Because GBRA's wells are located about 8 to 10 miles downdip from the outcrop of the Carrizo Aquifer and are between 1,225 to 1,400 feet deep, the water level decline will have limited effect in the outcrop and limit the potential effects on surface water resources. Also, the District has monitoring wells located in the outcrop updip from the GBRA well field and will be able to evaluate impacts in the outcrop from the combined pumping in the Carrizo Aquifer.<sup>68</sup>

Additionally, GBRA points out that the District has implemented well spacing requirements, maximum production allocations, a monitoring program, and a mitigation plan to help protect the groundwater resources and other existing users from unreasonable effects.<sup>69</sup>

The ALJ noted that the consideration factor is “whether the proposed use of water would *unreasonably* affect existing groundwater or surface water resources or existing permit holders.”<sup>70</sup> This contemplates that any groundwater production will have expected and normal effects associated with its pumping.

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<sup>65</sup> GBRA Ex. 24 at 9; GBRA Ex. 26.

<sup>66</sup> GM Ex. 202 at 14.

<sup>67</sup> GBRA Ex. 24 at 19.

<sup>68</sup> GBRA Ex. 24 at 19.

<sup>69</sup> GBRA Ex. 24 at 17-18.

<sup>70</sup> Rule 11.A.4 (emphasis added).



**F. Beneficial Use (Rule 11.A.5; Tex. Water Code § 36.113(D)(3))**

The District shall consider whether the proposed use of water is dedicated to a beneficial use.<sup>71</sup>

GBRA has committed the use of the 9,000 AFY of additional groundwater to public supply purposes and has executed treated water supply contracts with customers accordingly.<sup>72</sup> These customers need the additional water supply beginning in 2030, and are projected to use the entire amounts under these water supply agreements by 2034.<sup>73</sup> The agreements require customers to limit the use of water provided by GBRA to municipal and industrial uses, and prohibit the use of water for irrigation of golf courses.<sup>74</sup>

Mr. Boriack contends that not all of the water produced by GBRA will be put to beneficial use due to leaks in piping systems and that GBRA has not provided water loss audits.

No evidence of water leaks was presented. No requirement of a water loss audit was established. The ALJ found that the proposed use of water is dedicated to a beneficial use.

**G. Consistency with District's Management Plan (Rule 11.A.6; Tex. Water Code §§ 36.113(D)(4), 36.122(F)(3))**

The District shall consider whether the proposed use of water is consistent with the District's approved water management plan.<sup>75</sup> The District Management Plan's goals and the Texas Water Code outline these goals:

1. providing the most efficient use of groundwater;
2. controlling and preventing waste of groundwater;
3. controlling and preventing subsidence;
4. addressing conjunctive surface water management issues;
5. addressing natural resource issues;

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<sup>71</sup> Rule 11.A.5; Tex. Water Code § 36.113(d)(3).

<sup>72</sup> GBRA Ex. 1 at 18, 22; *see* GBRA Exs. 17-20.

<sup>73</sup> GBRA Ex. 1 at 18.

<sup>74</sup> GBRA Ex. 1 at 24.

<sup>75</sup> Rule 11.A.6; Tex. Water Code § 36.113(d)(4), 36.122(f)(3).

6. addressing drought conditions;
7. addressing conservation, recharge enhancement, rainwater, precipitation enhancement, or brush control, where appropriate and cost-effective;
8. addressing the desired future conditions adopted by the District under section 36.108 of the Texas Water Code; and
9. accurate accounting of the water transported from the District.<sup>76</sup>

According to GBRA, the proposed water use is consistent with the District's Management Plan.<sup>77</sup> To address the Management Plan's goals, GBRA: has implemented water conservation and drought contingency plans, which implement conservation measures; will prevent waste of groundwater by metering the water at various locations, which will allow detection of leaks; requires customers to conserve water, and to design, operate, and maintain facilities in a manner that will prevent waste; and has limited the use of water to municipal and industrial uses and prohibits the use of the water to irrigate golf courses.<sup>78</sup>

Protestants contend that GBRA's proposed use of water is not consistent with the District's approved Management Plan, because the proposed 9,000 AFY will result in a further exceedance of the applicable MAG as contained in the District's management plan.

The record shows that GBRA has incorporated measures to comply with the District's Management Plan. To the extent Protestants' contentions relate to the Desired Future Conditions DFCs, those issues will be addressed in sections IV.K and IV.L below.

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<sup>76</sup> WPA Ex. 3 at PDF 79-80; Tex. Water Code § 36.1071(a). The District Management Plan includes "accurate accounting of the water transported from the District," which is not included in Texas Water Code section 36.1071(a). Section 36.1071(a) includes "controlling and preventing subsidence," which is not included in the District Management Plan.

<sup>77</sup> GBRA Ex. 24 at 21.

<sup>78</sup> GBRA Ex. 24 at 21; *see* Tex. Water Code § 36.1071(a). Subsidence and DFCs are addressed below in sections IV.I and IV.K, respectively, of this Final Order.

**H. Avoid Waste and Achieve Water Conservation (Rule 11.A.7; Tex. Water Code § 36.113(d)(6))**

The District shall consider whether the applicant has agreed to avoid waste and achieve water conservation.<sup>79</sup>

GBRA asserts that it will avoid waste and achieve water conservation. GBRA implements conservation through a Wholesale Water Conservation Plan and a Drought Contingency Plan for its wholesale operations and adopts similar plans for its retail systems.<sup>80</sup> The Water Conservation Plan promotes practices to reduce water waste and increase water efficiency. The Drought Contingency Plan outlines criteria to initiate and terminate drought and emergency stages in response to water supply conditions. GBRA enforces these Plans by requiring contracts with customers providing to the “maximum extent possible” the conservation of water, and that facilities will be designed, constructed, operated, and maintained in a manner to prevent waste of water.<sup>81</sup> GBRA is preventing waste by including measuring equipment at each well pump, the point of delivery, and the water treatment plant to measure and account for diverted water and identify any system losses prior to delivery. This will monitor for any leaks in the raw water transmission system.<sup>82</sup> GBRA will transport groundwater by pipeline as required by Rule 11.E.2.c. and will monitor the pipeline closely for potential leaks.<sup>83</sup>

Protestants express concern that GBRA’s customers are asked to “avoid waste and achieve water conservation” without any assurance that this will be achieved or enforced. Mr. Hickman testified that GBRA passes this requirement to its customers who have their own conservation

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<sup>79</sup> Rule 11.A.7; Tex. Water Code § 36.113(d)(6).

<sup>80</sup> GBRA Ex. 1 at 22.

<sup>81</sup> GBRA Ex. 1 at 23-24.

<sup>82</sup> GBRA Ex. 1 at 24.

<sup>83</sup> GBRA Ex. 24 at 22.

plans and drought contingency plans.<sup>84</sup> On cross-examination, he could not think of an example “cutting back” a customer for wasting water.<sup>85</sup>

GBRA’s Wholesale Water Conservation Plan promotes practices to reduce water waste and increase water efficiency, and the Drought Contingency Plan provides criteria for drought and emergency stages in response to water supply conditions. Under the statute and rule, the consideration factor simply addresses whether the applicant has agreed to avoid waste and achieve water conservation, without any express requirements related to achieving or enforcing these measures.<sup>86</sup> The record establishes that GBRA has agreed to avoid waste and achieve water conservation.

#### **I. Subsidence (Rule 11.A.8)**

The District shall consider whether the proposed use of the water will result in significant subsidence.<sup>87</sup>

Protestants express concern that the proposed production will result in significant subsidence, especially in the outcrop area of the Carrizo Aquifer. This portion of GMA 13 has been identified as having a “moderate” risk of subsidence by the Texas Water Development Board (TWDB).<sup>88</sup> Neither the District nor GBRA has collected data to confirm whether there is subsidence occurring in the District from previous pumping. No analysis or modeling of subsidence was performed for these Applications.

GBRA and the District assert that subsidence is not a problem. According to Mr. Beach, the District’s management plan indicates that the rigid geologic framework of the aquifer is such

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<sup>84</sup> Tr. Vol. 1 at 118-19.

<sup>85</sup> Tr. Vol. 1 at 118.

<sup>86</sup> Rule 11.A.7; Tex. Water Code § 36.113(d)(6).

<sup>87</sup> Rule 11.A.8.

<sup>88</sup> Tr. Vol. 2 at 331. Although Mr. Boriack included a chart in his closing arguments indicating that the Carrizo-Wilcox Aquifer has high subsidence risk, the chart has not been admitted into evidence. *See* Boriack Closing Brief at 26.

that subsidence is not an issue.<sup>89</sup> Mr. Blandford testified that subsidence has not been an issue and is not expected to become an issue within GMA13 during the 50-year water management planning period.<sup>90</sup>

Two expert witnesses opined that subsidence is not expected to occur as a result of the proposed pumping. Therefore, the greater weight of the evidence establishes that the proposed pumping will not result in significant subsidence.

**J. Groundwater Quality and Well Plugging (Rule 11.A.9; Tex. Water Code § 36.113(d)(7))**

The District shall consider whether the applicant has agreed that reasonable diligence will be used to protect groundwater quality and that the applicant will follow well plugging guidelines at the time of well closure.<sup>91</sup>

GBRA asserts it will use reasonable diligence to protect groundwater quality and follow well plugging guidelines.<sup>92</sup>

Protestants expressed concern that the proposed pumping would adversely impact groundwater quality. Protestants assert that water quality testing at various wells across the District indicate that water quality in the Carrizo Aquifer has been declining.<sup>93</sup> No groundwater quality studies were performed for these Applications.<sup>94</sup>

The ALJ found that GBRA has agreed that reasonable diligence will be used to protect groundwater quality and that the applicant will follow well plugging guidelines at the time of well

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<sup>89</sup> GBRA Ex. 24 at 18; Tr. Vol. 2 at 330.

<sup>90</sup> GM Ex. 200 at 12.

<sup>91</sup> Rule 11.A.9; Tex. Water Code § 36.113(d)(7).

<sup>92</sup> GBRA Ex. 1 at 25; *see* Rules 11.A.9, .E.1.g, .E.2.h, 12.

<sup>93</sup> WPA Ex. 3 at PDF 22.

<sup>94</sup> Tr. Vol. 1 at 115.

closure. No requirement for groundwater quality studies as part of the application process was established.

**K. Water Permitted, Water Produced, and Aquifer Condition to Achieve the DFC (Rule 11.A.10)**

The District shall consider whether the amount of existing water permitted, amount of existing water being produced, and the condition of the aquifer (average water pressure decline/water table decline) at the time the permit application is filed in order to achieve the DFC.<sup>95</sup>

**1. Background on DFCs**

The Texas Legislature created GMAs “[i]n order to provide for the conservation, preservation, protection, recharging, and prevention of waste of the groundwater, and of groundwater reservoirs or their subdivisions, and to control subsidence caused by withdrawal of water from those groundwater reservoirs or their subdivisions, consistent with Section 59, Article XVI, Texas Constitution.”<sup>96</sup> The District is a member of GMA 13, which along with other GCDs, voted to approve DFCs for the major aquifers within the District, including the Carrizo Aquifer.<sup>97</sup>

The DFC is a quantitative description of a desired condition of the groundwater resources in a management area at one or more specified future times.<sup>98</sup> Each GCD shall ensure that its management plan contains goals and objectives consistent with achieving the DFC of the relevant aquifers as adopted during the joint planning process.<sup>99</sup> A district, to the extent possible, shall issue permits up to the point that the total volume of exempt and permitted groundwater production will achieve an applicable DFC.<sup>100</sup>

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<sup>95</sup> Rule 11.A.10.

<sup>96</sup> Tex. Water Code § 35.001.

<sup>97</sup> See Tex. Water Code §§ 36.001(30), 36.108.

<sup>98</sup> Tex. Water Code § 36.001(30); see Tex. Water Code § 36.108(d-2).

<sup>99</sup> Tex. Water Code § 36.1085.

<sup>100</sup> Tex. Water Code § 36.1132(a).



Two DFCs were selected for GMA 13 for the Carrizo-Wilcox Aquifer: (1) 75 percent of the saturated thickness in the outcrop at the end of 2012 remains in 2080; and (2) an average drawdown of 49 feet for all of GMA 13 from the end of 2012 conditions to the year 2080. The second DFC was used to produce the MAG for the aquifers.<sup>101</sup> MAG means the amount of water that may be produced on an average annual basis to achieve a DFC.<sup>102</sup> A management objective of GMA 13 is to estimate total annual groundwater production for each aquifer and compare the production estimates to the MAG.<sup>103</sup>

## **2. Drawdown**

There has been significant drawdown of the Carrizo Aquifer. The drawdown tends to be most dramatic in and around the well fields where pumping is occurring. However, the drawdown impacts most of the land within the District.<sup>104</sup> The largest drawdown is about 80 feet around the Schertz-Seguin Local Government Corporation and San Antonio Water Systems well fields, but drawdowns up to 60 feet have been occurring throughout much of the southern portion of the District.<sup>105</sup> Approximately 30 feet of drawdown has occurred in the eastern portion of the District.<sup>106</sup> Additional drawdown is expected from the pumping of GBRA and ARWA well fields under their current permits.

Based on GBRA's modeling, the proposed additional 9,000 AFY of pumping from the GBRA well field would result in up to approximately 40 feet of additional drawdown in 2070. The total drawdown in 2070 from the proposed GBRA well field producing 24,000 AFY would be

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<sup>101</sup> Boriack Ex. 8 at 6; GBRA Ex. 24 at 21-22; WPA Ex. 3 at PDF 330. Other parts of the record indicate a DFC drawdown of 49 feet. *See* WPA Ex. 3, LM-1 at PDF 10, 87, 299). This minor discrepancy would not result in any substantive change in the ALJ's analysis.

<sup>102</sup> Tex. Water. Code § 36.001(25).

<sup>103</sup> WPA Ex. 3, LM-1 at PDF 87.

<sup>104</sup> WPA Ex. 3, LM-1, Appendix 4; *see* WPA Ex. 3 at PDF 264.

<sup>105</sup> Tr. Vol. 3 at 480.

<sup>106</sup> Tr. Vol. 3 at 481.

over 100 feet. The total drawdown in 2070 from the proposed GBRA well field producing 24,000 AFY plus the ARWA well field producing 11,620 AFY would be over 145 feet. In all three scenarios, the maximum additional drawdown occurs around the producing well fields.<sup>107</sup> The adverse impacts from permits issued to major producers/exporters (GBRA, ARWA, and Aqua) have not been realized yet because they have not yet produced any groundwater to export out of the District.<sup>108</sup> According to Mr. Beach, what constitutes an “unreasonable impact” is a policy decision of the District.<sup>109</sup> He stated, “an unreasonable effect on groundwater resources would be if the groundwater level would be so low that a landowner couldn’t access groundwater in that aquifer.”<sup>110</sup>

The DFC for 2080 is 49 feet of drawdown over GMA 13, as compared to the modeled drawdown of 100 feet by 2070 for GBRA’s production of 24,000 AFY. It is notable that the DFC drawdown is averaged across the entire GMA 13 area, not specifically the District, and applies to both the Carrizo Aquifer and Wilcox Aquifer.<sup>111</sup>

The Board of Directors finds that the 100 feet of modeled drawdown by 2070 from GBRA’s production of 24,000 AFY (the permitted 15,000 AFY, plus the requested additional 9,000 AFY) exceeds the GMA’s DFC for 2080, which is only 49 feet of drawdown. Although the drawdowns associated with GBRA’s pumping may be reasonable and expected for the given quantity of pumping, GBRA’s production—in conjunction with all other production in the aquifer—is predicted to exceed the DFCs in the coming decades, absent intervening measures.

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<sup>107</sup> GM Ex. 202 at 450.

<sup>108</sup> See WPA Ex. 3 at PDF 124.

<sup>109</sup> Tr. Vol. 1 at 208.

<sup>110</sup> Tr. Vol. 1 at 208.

<sup>111</sup> Tr. Vol. 1 at 171-72.

### **3. MAG**

Protestants contend that the proposed amendment would cause the amount of existing water permitted, the amount of existing water produced, and the condition of the Carrizo Aquifer to not achieve the DFCs. MAGs are further discussed below in section IV.L.

#### **L. Availability of Water (Rule 15.D.1; Tex. Water Code § 36.122(F)(1))**

For export permits, the District shall consider the availability of water in the District and in the proposed receiving area during the period for which the water supply is requested.<sup>112</sup>

Mr. Hickman and Mr. Beach testified about the need for additional water in Caldwell and Hays Counties, which would receive the additional groundwater supplies.<sup>113</sup> These customers need the additional water supply beginning in 2030 and are projected to use the entire amounts under these agreements by 2034.<sup>114</sup>

#### **1. Applicable MAGs**

GBRA asserts that the MAGs included in the 2018 District's Management Plan are applicable, because that plan was in effect when the Applications were first submitted on May 10, 2022. Protestants contend that the MAGs in TWDB's July 25, 2022 report are applicable, because they are the MAGs that were in effect when the Applications became administratively complete. The MAGs (in AFY) are compared below.

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<sup>112</sup> Rule 15.D.1; Tex. Water Code § 36.233(f)(1).

<sup>113</sup> GBRA Ex. 1 at 18; GBRA Ex. 8 at PDF 3-4, PDF 9 (Table 5); GBRA Ex. 24 at 23.

<sup>114</sup> GBRA Ex. 1 at 18.

<b>MAG / Decade</b>	<b>2020</b>	<b>2030</b>	<b>2040</b>	<b>2050</b>	<b>2060</b>	<b>2070</b>	<b>2080</b>
11/13/2018 District Management Plan <sup>115</sup>	83,284	83,284	84,026	84,390	84,390	81,607	81,615
7/25/2022 TWDB Report <sup>116</sup>	47,584	61,365	71,628	81,327	86,278	87,238	79,692

Under Rule 11.A.10, the District shall consider the amount of water permitted, the amount of existing water being produced, and the condition of the aquifer at the time the permit application is filed in order to achieve the DFC. While the rule specifies that the timing (at the time of application) of the amounts of water permitted and produced and aquifer conditions is to be considered, the timing of the DFCs (and consequent MAGs) is not specified. Under Tex. Water Code § 36.1132(b)(1), in issuing permits, the District shall consider the MAG determined by the executive administrator. Again, no timing is specified for the applicable MAG.

GBRA asserts that under Local Government Code section 245.002(a)(1), the MAGs at the time the original application for permit was filed are applicable.<sup>117</sup> That section applies to a “regulatory agency,” which means the governing body of, or a bureau, department, division, board, commission, or other agency of, a political subdivision.<sup>118</sup> GCDs are political subdivisions under Tex. Water Code § 36.001(15). However, the Eighth Court of Appeals held that Texas Water Code

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<sup>115</sup> Boriack Ex. 8 at 7.

<sup>116</sup> Carrizo Aquifer amount totals for Caldwell County and Gonzales County. WPA Ex. 3, LM-3 at PDF 323.

<sup>117</sup> Tex. Local Gov’t Code § 245.002(a)(1) (“Each regulatory agency shall consider the approval, disapproval, or conditional approval of an application for a permit solely based on any orders, regulations, ordinances, rules, expiration dates, or other properly adopted requirements in effect at the time [] the original application for the permit is filed for review for any purpose, including review for administrative completeness[.]”)

<sup>118</sup> Tex. Local Gov’t Code § 245.001(4).

Chapter 36 supersedes Chapter 245 when a groundwater conservation district considers issuing permits or permit amendments.<sup>119</sup>

The MAGs are a planning tool and consideration factor for the District rather than a procedural requirement. Moreover, the District must use the best available science in the conservation and development of groundwater. Using the best available science includes using the latest planning tools of the District. The MAGs are based on the DFC and MODFLOW pumping simulation. Under the District's rules the MAGs applicable to GBRA's Applications are those included in the 2018 District Management Plan, however, the District's goal is to achieve the DFC, and therefore must also consider the 2022 MAG.

## **2. Availability of Water and MAGs**

The 2022 total production of Carrizo groundwater from both permitted and exempt wells was approximately 44,309 AFY.<sup>120</sup> The District has issued groundwater permits totaling approximately 91,285 AFY.<sup>121</sup>

Protestants argue that the requested amount exceeds the MAG for this decade, as well as for any period from now until 2080. When asked what the District would do if all the permittees decided to produce their permitted amounts, the GM testified that "the District would look at that and take appropriate action with policy changes," such as "making it so that no additional permits were granted, requesting that drought measures be taken and cutbacks occur for everybody."<sup>122</sup>

WPA points out that GBRA already has permits issued by the District to produce and export up to 15,000 AFY from its seven wells.<sup>123</sup> GBRA has not exported or produced any of the

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<sup>119</sup> *Guitar Holding Co., L.P. v. Hudspeth County Underground Water Conservation Dist.*, 209 S.W.3d 146, 170 (Tex.App.-El Paso 2006), *aff'd in part, rev'd in part*, 263 S.W.3d 910 (Tex. 2008).

<sup>120</sup> Tr. Vol. 2 at 401-02.

<sup>121</sup> WPA Ex. 3, LM-1 at PDF 124-28.

<sup>122</sup> Tr. Vol. 2 at 420-21.

<sup>123</sup> Tr. Vol. 1 at 60.

permitted water but seeks an additional 9,000 AFY and expanding its well field to a total of ten wells.<sup>124</sup> Protestants assert that GBRA's request for an additional 9,000 AFY will cause the existing water permitted (about 92,000 AFY) to further exceed the MAG (approximately 83,000 AFY for the decade starting 2030) set by TWDB for this District.<sup>125</sup> The amendment would also cause the amount of water expected to be produced in the near future to be about 90,000 AFY, also exceeding the District's MAG for this aquifer.<sup>126</sup> Protestants criticize that GBRA did not model the cumulative impact of all projected pumping in the Carrizo Aquifer.<sup>127</sup>

GBRA and the GM emphasize (and ultimately all parties agree) that the MAG is not a cap on how much groundwater may be permitted.<sup>128</sup> The MAG is an average annual estimate of what may be pumped over a planning horizon (usually 50 years) that will allow a district to achieve the DFC.<sup>129</sup> According to TWDB, "in the regional water planning process, total anticipated groundwater production in any planning decade may not exceed the MAG volume in any county-aquifer location."<sup>130</sup>

The District's 2022 total production amount from the Carrizo, approximately 44,309 acre-feet, is less than the 2018 MAG for the decade of 2020, which is 83,284 AFY.<sup>131</sup> The GM estimated that within 10 years, 80 to 90 percent of the permitted amounts would be produced on an annual basis.<sup>132</sup> While Schertz-Seguin Local Government Corporation has been producing only about two-thirds of its permitted amount of 19,362 AFY, if it begins to produce close to its permitted

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<sup>124</sup> See WPA Ex. 3 at PDF 124.

<sup>125</sup> Tr. Vol. 3 at 527-28; Boriack Ex. 8 at 7.

<sup>126</sup> Boriack Ex. 8 at 7.

<sup>127</sup> Tr. Vol. 1 at 194-95.

<sup>128</sup> Tr. Vol. 1 at 224; Tr. Vol. 3 at 526-27.

<sup>129</sup> GBRA Ex. 29 at 4-5.

<sup>130</sup> Texas Water Development Board, South Central Texas Regional Water Planning Group, 2021 Region L Water Plan at 3-4, *available at* <https://www.twdb.texas.gov/waterplanning/rwp/plans/2021/> (accessed November 2024). The ALJ took official notice of the 2021 Region L Water Plan.

<sup>131</sup> WPA Ex. 3 at PDF 89, 323.

<sup>132</sup> Tr. Vol. 3 at 627.

amount, that would bring the amount of Carrizo production up to about 50,000 AFY.<sup>133</sup> If GBRA and ARWA's expected production under their permits (totaling 26,620 AFY) are added, that would bring the expected Carrizo production to more than 75,000 AFY. This level of groundwater production would exceed the 2022 MAG.

The preponderance of evidence shows that groundwater production is expected to exceed the MAG for the Carrizo Aquifer in the next decade, absent intervening measures from the District.

**M. Effects of Transfer on Aquifer Conditions, Depletion, Existing Permit Holders, or Other Groundwater Users in the District (Rule 15.D.2; Tex. Water Code § 36.122(f)(2))**

For export permits, the District shall consider the projected effect of the proposed transfer on aquifer conditions, depletion, subsidence, or effects on existing permit holders or other groundwater users within the District.<sup>134</sup>

According to Mr. Beach, the simulated impacts show that the proposed pumping will not reduce water levels in the aquifer to an extent that precludes a well owner from accessing groundwater.<sup>135</sup> The impacts of exporting the water are expected to be the same normal impacts from groundwater production.<sup>136</sup>

The simulated impacts show that the proposed pumping will not reduce water levels in the aquifer to an extent that precludes a well owner from accessing groundwater. The well spacing requirements, production limits, monitoring program, and mitigation program will further protect against unreasonable effects on existing groundwater and surface water resources, existing permit

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<sup>133</sup> Tr. Vol. 2 at 408; WPA Ex. 3 at PDF 124.

<sup>134</sup> Rule 15.D.2; Tex. Water Code § 36.122(f)(2).

<sup>135</sup> GBRA Ex. 24 at 17-18.

<sup>136</sup> GBRA Ex. 24 at 23.

holders, and other groundwater users.<sup>137</sup> The effects of the pumping and transfer on aquifer conditions was discussed in sections IV.K and IV.L as it relates to DFCs and MAGs.

**N. Regional Water Plan and District's Management Plan (Rule 15.D.3; Tex. Water Code 36.122(f)(3))**

For export permits, the District shall consider the approved regional water plan and certified District management plan.<sup>138</sup>

According to Protestants, GBRA's proposed amendment to its groundwater production and export project as contained in its permit applications is not included in the approved regional water plan covering this District. Mr. Hickman testified that the 2021 Region L Water Plan does not mention the additional 9,000 AFY beyond the 15,000 AFY that is associated with the GBRA Mid-Basin Project (Phase 1).<sup>139</sup> Protestants therefore contend that the proposed amendment is not consistent with the District's approved management plan.

However, the 2021 Region L Water Plan projects an additional water need of approximately 78,000 AFY by the year 2030 in the portion of GBRA's statutory district that falls within Region L. This projected water need increases to approximately 152,000 AFY by the year 2070.<sup>140</sup> The 2021 Region L Water Plan identified GBRA's originally permitted 15,000 AFY as part of GBRA's Mid-Based Project (Phase 1) but it is silent on the additional 9,000 AFY requested by GBRA.

The regional water plan does not mention the expansion to the Phase 1 project or GBRA's requested 9,000 AFY. As such, the Applications are not consistent with the regional water plan.

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<sup>137</sup> GBRA Ex. 24 at 17-18.

<sup>138</sup> Rule 15.D.3; Tex. Water Code § 36.122(f)(3).

<sup>139</sup> 2021 Region L Water Plan, Section 5.2.12.1.

<sup>140</sup> GBRA Ex. 1 at 21; GBRA Ex. 21 at Bates 1252-81.



The Applications' consistency with the District Management Plan is generally discussed in section IV.G, except that matters related to the DFCs are discussed in sections IV.K and IV.L.

## **O. Analysis and Conclusions**

### **1. Operating Permit**

In Texas, a landowner owns the groundwater below the surface of the landowner's land as real property.<sup>141</sup> GCDs provide for the conservation, preservation, protection, recharging, and prevention of waste of groundwater.<sup>142</sup> GCDs protect property rights and balance interests in conservation and development to meet the needs of this state.<sup>143</sup>

When GBRA's requested total of 24,000 AFY is added to the District's 2022 total Carrizo production of approximately 44,300 acre-feet, that equals 68,300 AFY of projected production. The GM estimated that within a decade, 80 to 90 percent of the permitted amount would be produced, which equals approximately 73,000 to 82,000 AFY; this exceeds the MAGs for the 2030 and 2040 decades. GBRA's production, in addition to production over the whole District, is predicted to exceed the DFCs within a decade and continue exceeding the DFCs absent intervening measures.

The Texas Supreme Court has held landowners own the groundwater in place as real property, similar to oil and gas.<sup>144</sup> Accordingly, a landowner's interest in groundwater cannot be taken for public use without adequate compensation.<sup>145</sup> And a landowner's lessees of the groundwater ownership are entitled to the same rights.<sup>146</sup>

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<sup>141</sup> Tex. Water Code § 36.002; *see Edwards Aquifer Auth. v. Day*, 369 S.W.3d 814, 832-34 (Tex. 2012).

<sup>142</sup> Tex. Water Code § 36.0015(b).

<sup>143</sup> Tex. Water Code § 36.0015(b).

<sup>144</sup> *Day*, 369 S.W.3d at 831-32.

<sup>145</sup> *Day*, 369 S.W.3d at 838.

<sup>146</sup> *See* Tex. Water Code § 36.002(c).

Currently, there is no statute, rule, or case law that gives priority to existing users of groundwater in this District.<sup>147</sup> Regardless of whether the landowner has a permit or not, landowners own the groundwater below the surface as real property.<sup>148</sup> These property rights in groundwater are protected not only for existing users, but also landowners who will be applying to use groundwater in the future. Therefore, a permit applicant will be treated evenhandedly by the District regardless of when they apply for the permit.

Any possible future exceedances of the DFCs must be managed through District rule amendments or policy decisions. Tex. Water Code § 36.116 provides several methods the District may utilize to minimize the drawdown of the water table. Denial of permit applications that otherwise meet applicable requirements is not a listed method.

For these reasons, the Board of Directors holds that GBRA's application to amend its Operating Permit is denied.

## **2. Export Permit**

With respect to the proposed amendment to the Export Permit, the district shall consider: (1) the availability of water in the district and the proposed receiving area during the period for which the water supply is requested; (2) the projected effect of the proposed transfer on aquifer conditions, depletion, subsidence, or effects on existing permit holders or other groundwater users within the district; and (3) the approved regional water plan and approved district management plan.<sup>149</sup>

There are several consideration factors that weigh against exporting groundwater out of the District. The availability of water in the District is limited. The projected effect of the proposed

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<sup>147</sup> Compare to Tex. Water Code § 11.027 ("As between appropriators, the first in time is the first in right," in surface water rights).

<sup>148</sup> Tex. Water. Code § 36.002; see *Day*, 369 S.W.3d at 832-34.

<sup>149</sup> Tex. Water Code § 36.122(f); Rule 15.D.

production and export on aquifer conditions and the DFCs is not favorable. The proposed production and export of water does not comport with the approved district management plan to the extent that the plan incorporates the DFCs as objectives. No statute, rule, or caselaw has been presented establishing any vested property right related to a landowner's interest in exporting groundwater.

Therefore, GBRA's application to amend its Export Permit is denied.

## **V. Allocation of Costs**

The party requesting the hearing before SOAH shall pay all costs associated with the contract for the hearing and shall, before the hearing begins, deposit with the district an amount sufficient to pay the contract amount.<sup>150</sup> District Rule 10.E.1 provides that the "District shall engage a qualified and independent third party to confirm all inputs of the model," and the "cost of the independent third party review shall be paid by the applicant."

Mr. Boriack requests compensation from the District and GM for his legal efforts representing himself in this matter. "[A] party must be represented by an attorney to secure an award of attorney's fees."<sup>151</sup> Generally, loss of time and expenses incurred in a suit are not recoverable as costs or damages unless recovery of those items is expressly provided for by statute.<sup>152</sup> As Mr. Boriack's claim to compensation lacks any legal basis, the request for compensation is denied.

The GM urges that the Applicant be ordered to pay the District's transcript costs, the attorney fees of the GM, and the cost of the independent third-party review.<sup>153</sup> The GM contends

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<sup>150</sup> Tex. Water Code § 36.416(c); Rule 25.E.5.

<sup>151</sup> *Rohrmoos Venture v. UTSW DVA Healthcare, LLP*, 578 S.W.3d 469,488 (Tex. 2019).

<sup>152</sup> See *Shenandoah Assocs. v. J & K Properties, Inc.*, 741 S.W.2d 470, 486 (Tex. App. – Dallas 1987, writ denied).

<sup>153</sup> With her reply brief, the GM submitted a declaration of costs incurred for transcripts, attorney's fees, and costs, and the District's third-party hydrogeologist. However, the evidentiary record was closed upon conclusion of the hearing on June 7, 2024. The dollar amounts submitted by the GM are not considered for the purposes of this Final Order.

that the transcript costs and her attorney fees and costs are associated with the SOAH contract for hearing. Additionally, the GM asserts that GBRA has not paid the District for the costs of Neil Blandford's services as an independent hydrogeologist. WPA requests that GBRA pay the GM's legal fees if the Applications are denied or found to be not administratively complete.

The ALJ found that the GM's attorney fees and costs are not considered "costs associated with the contract for hearing" under Tex. Water Code § 36.416(c) and Rule 25.E.5. Similarly, the costs for Mr. Blandford's expert witness services are not considered "costs associated with the contract for hearing." The GM remains responsible for paying her own attorney fees and costs to represent herself in the contested case hearing.

The District engaged DBS&A for the independent third-party review required by District Rule 10.E.1. According to the GM's testimony during the hearing, GBRA's application fee covered the costs of DBS&A's independent review.<sup>154</sup> Neither the Texas Water Code nor the District Rules require applicant GBRA to pay the GM's costs associated with another independent hydrogeologist, expert witness Mr. Blandford. Similarly, no statute or rule addresses which party pays the transcript costs of a SOAH hearing.

As such, the ALJ concluded that the GM shall bear her own costs for attorney fees, Mr. Blandford's services, and transcript costs. As the party requesting the SOAH hearing, GBRA bears the cost for services under the SOAH contract.

## **VI. RECOMMENDATION**

After consideration of the applicable law and evidenced presented, the Board of Directors concludes that: (1) GBRA's application to amend its Operating Permit should be denied because it does not meet the substantive requirements of the Texas Water Code and District rules; and (2)

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<sup>154</sup> Tr. Vol. 3 at 503-04; *see* Rule 10.E.1.

GBRA's application to amend its Export Permit should be denied because the consideration factors weighed against issuance of the export permit amendment.

The GM bears the costs for her attorney fees, expert witness services, and transcript costs; and GBRA bears the cost for services under the SOAH contract.

In support of denying the Applications, the Board of Directors adopts the following Findings of Fact and Conclusions of Law.

## **VII. Findings of Fact**

### ***Background and Procedural History***

1. The Gonzales County Underground Water Conservation District (District) is one of many groundwater conservation districts (GCDs) created by the Texas Legislature to manage groundwater resources within each district's boundaries.
2. The Guadalupe-Blanco River Authority (GBRA) is a conservation and reclamation district established by the Texas Legislature that serves as a regional water supplier, supplying treated and untreated water to people, cities, businesses, farmers, and industries.
3. GBRA purchased 165 leases on approximately 42,000 acres of land in Gonzales and Caldwell counties for the right to produce groundwater supplies out of the Carrizo Aquifer beneath the leased property.
4. GBRA's existing Operating Permit for Public Water Supply Permit No. 11-16-17 (Operating Permit) and Export Permit No. 01-13-01 (Export Permit) authorize GBRA to pump a maximum of 15,000 acre-feet per year (AFY) of groundwater from the Carrizo Aquifer through seven wells that each have a defined maximum pumping rate and export the produced water outside of the District's boundaries.
5. On May 10, 2022, GBRA filed its application to amend its Operating Permit, seeking to produce an additional 9,000 AFY of groundwater, to add three additional wells, and to revise the capacities of the existing seven wells.
6. On May 10, 2022, GBRA files its application to amend its Export Permit, seeking to export the additional 9,000 AFY out of the District to Caldwell, Hays, and Guadalupe Counties.
7. After GBRA provided the District with additional information, the District declared GBRA's applications administratively complete on August 17, 2022.
8. GBRA published notice of the applications and mailed notices to adjacent landowners and well owners within one-half mile of the proposed water wells.

9. On September 13 and October 11, 2022, the District's Board of Directors (Board) held public hearings on GBRA's applications.
10. On November 8, 2022, the Board referred the consideration of the contested case hearing requests to Judge Stephen Abel. Judge Abel considered the hearing requests on February 16, 2023 and on February 28, 2023, recommended that the Board issue an order naming Gonzales County Water Supply Corporation, the Water Protection Association, Mark Ploeger, Sally Ploeger, Mary Ann Menning, Ted Boriack, and Phil and Jason Breitschopf and A.P. Breitschopf and Sons, Inc. as parties.
11. On March 9, 2023, GBRA requested that GBRA's applications be referred to the State Office of Administrative Hearings (SOAH). The Board named the parties and referred the case to SOAH on March 14, 2023.
12. On August 9, 2023, SOAH Administrative Law Judge (ALJ) Linda Brite held the preliminary hearing via video conference and named GBRA, General Manager (GM) of the District, Gonzales County Water Supply Corporation, the Water Protection Association, Mark Ploeger, Sally Ploeger, Mary Ann Menning, Ted Boriack, and Phil and Jason Breitschopf, and A.P. Breitschopf and Sons, Inc. as parties.
13. On December 21, 2023, Gonzales County Water Supply Corporation filed a motion to withdraw as a party, which was granted by SOAH Order No. 3 on January 3, 2024.
14. The hearing on the merits was held in-person on June 5-7, 2024, at the Gonzales County Courthouse and District office in Gonzales, Texas. The record closed on October 21, 2024, with the filing of written briefs.

### ***Administrative Completeness***

15. GBRA applied for amendments to its Operating Permit and its Export Permit on the forms prescribed by the District.
16. The District does not require that the applications be sworn before a notary.
17. The original Applications included a cover letter signed by GBRA's general manager.
18. The Applications were resubmitted in February 2024 with signatures on the Application forms.
19. The Applications were accompanied by the prescribed fees.
20. The Export Permit application contains the information required by District Rule (Rule) 15.C.
21. The GM deemed the Applications administratively complete on August 17, 2022.

### ***Rule 10***

22. The third-party modeling required by Rule 10.E.1 was paid by GBRA via the application fee.
23. GBRA entered into a Participation Agreement in the Eastern Gonzales County Dedicated Mitigation Fund (Mitigation Fund), by and between Texas Water Alliance (as predecessor in interest to GBRA) and the District.
24. Participation in the Mitigation Fund fulfills the mitigation plan requirements of Rule 10.E.3.
25. The Applications contain the information required by Rule 10.

### ***Well Spacing and Production Requirements***

26. GBRA has secured groundwater leases on approximately 42,000 acres of land.
27. GBRA's existing Operating Permit authorizes the production of 15,000 AFY. GBRA seeks an amendment to the Operating Permit that would authorize an additional 9,000 AFY for a total of 24,000 AFY of water.
28. GBRA has sufficient land acreage under its control to comply with the District's production limits.
29. The existing and proposed wells are or will be offset from the property lines between 1,965 feet to 2,790 feet.
30. The Applications meet the production and spacing requirements of Rules 11 and 18.

### ***Modeling Results and Production Limits***

31. GBRA's proposed production conforms with the District's production limit of one AFY per acre of land.
32. The District uses the 2004 Southern Groundwater Availability Models for the Queen City and Sparta Aquifers (the Carrizo-Wilcox GAM), which is a regional groundwater model used to assess groundwater availability and future aquifer conditions.
33. GBRA used the Carrizo-Wilcox GAM to assess the effects of the use of an additional 9,000 AFY on the groundwater resources. No modeling of the cumulative drawdown including all District production was performed.
34. The impact of the proposed use of the additional 9,000 AFY is predicted to be up to 40 feet of additional drawdown occurring in and around GBRA's proposed three new wells.

35. The modeling results of GBRA's proposed use of the produced groundwater does not deviate from the production limits.

### ***Groundwater and Surface Water Resources and Existing Permit Holders***

36. The modeling results using the Carrizo-Wilcox GAM provided an estimate of the long-term water level decline in the Carrizo Aquifer.
37. The maximum simulated water level decline from the existing and proposed wells was about 121 feet in the GBRA well field.
38. The overall thickness of the Carrizo Aquifer in this location is about 300 to 400 feet.
39. This water level decline represents about a 15 to 20 percent reduction in the potentiometric surface above the top of the Carrizo Aquifer at the GBRA well field. The percent reduction in the potentiometric surface away from the GBRA well field will be less.
40. All pumping wells cause some level of water level decline. The water level declines indicated by the modeling by GBRA and the District are normal impacts from production of groundwater wells.
41. The simulated impacts show that the proposed pumping will not reduce water levels in the aquifer to an extent that precludes a well owner from accessing groundwater.
42. The District's well spacing and production limits help protect the groundwater resources and other existing users from unreasonable effects.
43. The District has a monitoring program. GBRA has an agreement with the District whereby GBRA has provided funding for monitoring wells.
44. Shallow wells located in or close to the aquifer outcrop are more likely to affect surface water resources because the water level decline from pumping of those wells has a greater impact on the water table, which may also result in more impact to rivers, streams, and other surface water resources.
45. The existing GBRA wells are located about 8 to 10 miles downdip from the outcrop of the Carrizo Aquifer and range from 1,225 to 1,400 feet deep.
46. Water level decline from the proposed pumping will have limited effect in the outcrop and limited potential effects on surface water resources.

### ***Beneficial Use***

47. GBRA has executed treated water supply contracts with customer entities to provide the requested 9,000 AFY of groundwater as a public water supply.



48. These customers will need the water beginning in 2030 and are projected to use the entire amounts under these agreements by 2034.
49. The proposed use of groundwater is dedicated to a beneficial use.

#### ***District Management Plan***

50. GBRA addresses efficient use of groundwater, prevents waste, and addresses conservation and drought conditions by implementing and enforcing its water conservation and drought contingency plans, which implement conservation measures to the maximum extent practicable.
51. GBRA will prevent waste of groundwater by metering the water at various locations, which will allow GBRA to detect leaks.
52. GBRA, through its water supply contracts, also requires its customers to conserve water, and to design, operate, and maintain facilities in a manner that will prevent waste.
53. GBRA has contractually limited the use of the water to municipal and industrial uses and prohibited use of the water to irrigate golf courses.
54. Because of the rigid geologic framework of the aquifer, subsidence is not a relevant issue in permitting within the District.
55. The proposed pumping will not result in significant subsidence.
56. The District's monitoring program, along with those of other GCDs in GMA 13, will be used to monitor, track, and comply with the desired future conditions (DFCs).
57. GBRA's contributions to the District's groundwater monitoring program will help the District monitor the aquifer to ensure compliance with the DFC.

#### ***Avoid Waste and Achieve Water Conservation***

58. GBRA's water Conservation Plan promotes practices to reduce water waste and increase water use efficiency.
59. GBRA's Drought Contingency Plan outlines criteria to initiate and terminate drought and emergency stages in response to water supply conditions and includes water supply or demand measures that should be implemented during each emergency stage to conserve water supply or protect the integrity of water supply facilities.
60. GBRA enforces its Water Conservation and Drought Contingency plans by requiring contract provisions that customers provide to the "maximum extent possible" for the conservation of water, that facilities will be designed, constructed, and operated, and

maintained in a manner to prevent waste of water, and that the customer adopt a plan consistent with GBRA's plans.

61. The treated water supply contracts for the 9,000 AFY limit the use of water provided by GBRA to municipal and industrial uses, prohibit the use of water for irrigation of golf courses, and allow for the direct reuse of water.
62. GBRA will prevent waste in the proposed wellfield and transmission system by including measuring equipment at each well pump, the point of delivery, and the water treatment plant to measure and account for diverted water and identify any system losses prior to delivery. This measuring equipment will be regularly calibrated and will monitor for any leaks in the raw water transmission system.
63. Alliance Regional Water Authority (ARWA) will own the water treatment and treated water system infrastructure, and GBRA has an agreement with ARWA that obligates ARWA to install and maintain a similar metering system to monitor for leaks between the water treatment facilities and customer delivery points.
64. The groundwater will be transported via pipeline as required by Rule 11.E.2.c.
65. GBRA has agreed to and has undertaken measures to avoid waste and achieve water conservation.

### ***Subsidence***

66. The District Management Plan states that subsidence is not a relevant issue in permitting by the District due to the rigid geologic framework of the Carrizo Aquifer.

### ***Groundwater Quality and Well Plugging***

67. GBRA will use reasonable diligence to protect groundwater quality and follow well plugging guidelines in accordance with state law and District rules.

### ***Water Permitted, Water Produced, and Aquifer Conditions to Achieve the DFCs***

68. A DFC for the Carrizo-Wilcox Aquifer in Groundwater Management Area (GMA) 13 is an average drawdown of 49 feet for all of GMA 13 calculated from the end of 2012 conditions through the year 2080.
69. In the Carrizo-Wilcox outcrop, the GMA 13 DFC is to maintain 75 percent of the saturated thickness in the outcrop at the end of 2012 through the year 2080.
70. GBRA's proposed additional 9,000 AFY of pumping would result in up to approximately 40 feet of additional drawdown in 2070.

71. The modeled impact of GBRA's permitted 15,000 AFY plus the proposed 9,000 AFY is over 100 feet of drawdown in 2070.
72. The 100 feet of modeled drawdown by 2070 from GBRA's production of 24,000 AFY exceeds GMA 13's DFC of 49 feet of drawdown in the Carrizo for 2080.

### *Availability of Water*

73. The current DFC, approved in 2022, is applicable, and the applicable MAGs are those included in the District's November 13, 2018, Management Plan.
74. The 2018 MAGs for the District are:

**Table 2**  
**Modeled Available Groundwater**  
**Gonzales County Underground Water Conservation District**  
**Appendix 5: GAM Run 10-017-027 MAG**

Aquifer	Year						
	2012 (ac-ft/yr)	2020 (ac-ft/yr)	2030 (ac-ft/yr)	2040 (ac-ft/yr)	2050 (ac-ft/yr)	2060 (ac-ft/yr)	2070 (ac-ft/yr)
Upper Wilcox	0	0	0	0	0	0	0
Middle Wilcox	12,187	12,187	12,187	12,187	12,187	12,187	12,187
Lower Wilcox	25,836	25,836	25,836	25,836	25,836	25,836	25,836
Carrizo	83,284	83,284	83,284	84,026	84,390	81,607	81,615
Queen City	5,351	5,351	5,351	5,351	5,351	5,351	5,351
Sparta	3,554	3,554	3,554	3,554	3,554	3,554	3,554
Yegua Jackson	4,140	4,140	4,140	4,140	4,140	4,140	4,140

75. The 2022 MAGs for the District are:

Decade	2020	2030	2040	2050	2060	2070	2080
MAG (in AFY)	47,584	61,365	71,628	81,327	86,278	87,238	79,692

76. The 2022 total production of Carrizo groundwater from permitted and exempt wells was approximately 44,309 AFY.
77. Adding GBRA's requested 9,000 AFY plus the 15,000 AFY already permitted to the 2022 total production of approximately 44,300 acre-feet equals 68,300 AFY of projected production.
78. GBRA is not yet producing its previously permitted 15,000 AFY.
79. The District has issued groundwater permits totaling approximately 91,285 AFY.

80. Within a decade, 80 to 90 percent of the permitted amount for municipal suppliers, Schertz-Seguin Local Government Corporation and Aqua Water Supply Corporation, is expected to be produced, which amounts to a 6,305 to 8,741 AFY increase in estimated production.
81. Absent intervening measures, GBRA's production, in addition to production over the whole District, is predicted to exceed the MAGs within a decade, which would prevent the District from achieving the DFC, taking into consideration the factors listed under Tex. Water Code § 36.1132(b).
82. The District's monitoring program and policy decisions will be used to monitor and comply with the DFCs.
83. GBRA's contributions to the District's groundwater monitoring program will help the District monitor the aquifer to ensure compliance with the DFC.

***Effects of Transfer on Aquifer Conditions, Depletion, Existing Permit Holders, or Other Groundwater Users in the District***

84. The maximum simulated water level decline from the permitted 15,000 AFY and proposed 9,000 AFY is modeled to be about 121 feet in the GBRA well field.
85. The overall thickness of the Carrizo Aquifer in this location is around 300 to 400 feet.
86. This water level decline represents about a 15 to 20 percent reduction in the potentiometric surface above the top of the Carrizo Aquifer at the GBRA well field. The percent reduction in the potentiometric surface away from the GBRA well field will be less.
87. The water level declines indicated by modeling are normal impacts from the production of groundwater wells.
88. The simulated impacts show that the proposed pumping will not reduce water levels in the aquifer to an extent that precludes a well owner from accessing groundwater.

***Regional Water Plan and District Management Plan***

89. The 2021 Region L Water Plan includes the ARWA/GBRA Project (Phase 1) water management strategy as a recommended strategy. This includes GBRA's previously permitted 15,000 AFY.
90. The 2021 Region L Water Plan projects an additional water need of approximately 78,000 AFY by the year 2030 in the portion of GBRA's statutory district that falls within Region L. This projected water need increases to approximately 152,000 AFY by the year 2070.
91. GBRA's requested production and transport of 9,000 AFY is an expansion of a recommended water management strategy of the Region L Water Plan.

92. The Region L Water Plan does not mention the expansion of the Phase 1 project with the additional 9,000 AFY requested by GBRA.
93. The regional water plan is silent on GBRA's proposed use and transport of an additional 9,000 AFY.
94. Aside from predicted effects on achieving the DFCs, GBRA's proposed use and transport of water is consistent with the District's management plan.

### ***Allocation of Costs***

95. Mr. Boriack represented himself in this matter.
96. GBRA paid the application fee to cover the independent third-party review by Daniel B. Stephens & Associates, Inc.
97. Costs associated with the SOAH contract for hearing do not include the GM's attorney fees or expert witness services.
98. The GM hired Neil Blandford as an expert witness.
99. GBRA requested the SOAH hearing.

### **VIII. Conclusions of Law**

1. The District has jurisdiction to decide the issues raised by GBRA's Applications. Tex. Water Code Chapter 36.
2. SOAH had jurisdiction in this proceeding, including the authority to issue a proposal for decision with proposed findings of fact and conclusions of law. Tex. Water Code §§ 36.416, 36.4165.
3. As the party seeking the permit amendments, GBRA has the burden of proof by a preponderance of the evidence. 1 Tex. Admin. Code § 155.427; *Granek v. Texas St. Bd. of Med. Exam'rs*, 172 S.W.3d 761, 777 (Tex. App.—Austin 2005, no pet.).
4. Notice was accomplished in accordance with Chapter 36 of the Texas Water Code and the District Rules.
5. The District did not require that the Applications be sworn to, as provided by Texas Water Code § 36.113(b).
6. The requirement that applications be sworn is directory, rather than mandatory. *See AC Interests, L.P. v. Texas Comm'n on Env't Quality*, 543 S.W.3d 703, 714 (Tex. 2018).

7. Aside from the requirement that an application be sworn, the Applications conform to the requirements prescribed by Texas Water Code Chapter 36 and the Rules. Tex. Water Code §§ 36.113(b), (c), and (d)(1), 36.122; Rules 10, 11.A.1, and 15.
8. GBRA's proposed wells conform with the well spacing and production requirements. Rules 11.A.2, 18.A, 18.B.
9. The modeling results of GBRA's proposed groundwater production do not significantly deviate from the production limits. Rule 11.A.3.
10. The proposed groundwater production will have an unreasonable effect on groundwater and surface water resources and existing permit holders. Tex. Water Code §§ 36.113(d)(2) and (f), 36.1132(b), 36.116, 36.122(f)(2); Rules 11.A.4 and 15.D.2.
11. The proposed use of water is dedicated to a beneficial use. Tex. Water Code § 36.113(d)(3); Rule 11.A.5.
12. The proposed groundwater production is consistent with the District's management plan except that the amount of production interferes with the District's ability to achieve its DFC. Tex. Water Code §§ 36.113(d)(4), 36.122(f)(3); Rule 11.A.6.
13. GBRA will avoid waste and achieve water conservation. Tex. Water Code §§ 36.113(d)(6), (f), 36.122(f)(2); Rule 11.A.7.
14. The proposed use will not result in significant subsidence. Tex. Water Code §§ 36.113(f), 36.122(f)(2); Rules 11.A.8, 15.D.2.
15. GBRA will use reasonable diligence to protect groundwater quality and follow well-plugging guidelines. Tex. Water Code § 36.113(d)(7); Rule 11.A.9.
16. The amount of existing water permitted, the amount of existing water produced, the MAG, existing and projected exempt production, yearly precipitation and production trends, and the condition of the aquifer will prevent the achievement of the DFC within a decade, absent intervening measures. Tex. Water Code § 36.1132(b); Rule 11.A.10.
17. There is limited water availability in the District for transport. Tex. Water Code § 36.122(f)(1); Rule 15.D.1.
18. There is a need for water in the proposed receiving area during the period for which the water supply is requested. Tex. Water Code § 36.122(f)(1); Rule 15.D.1.
19. The proposed water transport will not have an unreasonable effect on depletion, existing permit holders, or other groundwater users in the District. Tex. Water Code § 36.122(f)(2); Rule 15.D.2.

20. The proposed transport of the water, which serves as the sole purpose for producing the groundwater, is expected to have unreasonable effects on aquifer conditions as it relates to achieving DFCs. Tex. Water Code § 36.122(f)(2); Rule 15.D.2.
21. GBRA's proposed transport of the water is inconsistent with the regional water plan. Tex. Water Code § 36.122(f)(3); Rules 10.E.4.d, 15.D.3.
22. Aside from predicted effects on achieving the DFCs, GBRA's proposed transport of the water is consistent with the approved District management plan. Tex. Water Code § 36.122(f)(3); Rule 15.D.3.
23. A landowner owns the groundwater below the surface of the landowner's land as real property. Tex. Water Code § 36.002(a).
24. Generally, loss of time and expenses incurred in a suit are not recoverable as costs or damages unless recovery of those items is expressly provided for by statute. *See Shenandoah Assocs. v. J & K Properties, Inc.*, 741 S.W.2d 470, 486 (Tex. App. – Dallas 1987, writ denied).
25. Mr. Boriack is not entitled to recover costs associated with his efforts representing himself in this matter.
26. "Costs associated with the contract for hearing" do not include the GM's attorney fees and expert witness fees. Tex. Water Code § 36.416(c); Rule 25.E.5.
27. The GM bears her own costs for attorney fees, expert witness services, and transcript costs.
28. As the party requesting the SOAH hearing, GBRA bears the cost for services under the SOAH contract. Tex. Water Code § 36.416(c); Rule 25.E.5.

NOW THEREFORE, the Board APPROVES and ADOPTS the attached Proposal for Decision,  
FINAL DECISION including Findings of Fact and Conclusions of Law

PASSED AND EFFECTIVE, this 30<sup>th</sup> day of July 2025.

GONZALES COUNTY UNDERGROUND  
WATER CONSERVATION DISTRICT

By: \_\_\_\_\_  
Bruce Tieken  
Board President

By: \_\_\_\_\_  
Mike St. John  
Vice-President

By: \_\_\_\_\_  
Barry Miller  
Secretary-Treasurer

By: \_\_\_\_\_  
Mark Ainsworth  
Board Member

ATTEST:

By: \_\_\_\_\_  
Glenn Glass  
Board Member